

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

LAWRENCE J. HARDGE

PLAINTIFF

VS.

CIVIL ACTION NO. 3:04CV437LS

CHRISTOPHER EPPS, *ET AL.*

DEFENDANTS

ORDER

This matter came before the court on the Defendants' Motion to Strike Expert Witness, by which they seek an Order striking the expert designated by the Plaintiff on grounds that a report had not been provided, as is required by Fed. R. Civ. P. 26(a)(2) and Unif. Local R. 26.1(A)(2). The Plaintiff opposes the Motion and asserts that the requisite information was initially unavailable to his attorney due to some confusion regarding documents in the possession of attorney Roy Smith. According to a pleading filed in response to the Defendants' rebuttal (a pleading not technically permitted by the Rules, but considered by the court in all fairness to the Plaintiff), the information is now available.

Reviewing the docket in this matter, the court notes that Roy Smith entered an appearance in this matter on March 31, 2006, but apparently has performed no act on the Plaintiff's behalf since that time. The Plaintiff has now submitted a Motion for Disqualification of Counsel. Since Smith's puzzling appearance as counsel of record could have created confusion regarding the whereabouts of documents, the court will not strike the Plaintiff's designation at this time.

IT IS, THEREFORE, ORDERED as follows:

1. The Defendant's Motion to Strike Expert Witness is hereby **denied**.
2. The Case Management Plan Order previously entered in this matter is hereby

amended as follows:

- a. Discovery shall be completed by October 20, 2006.
 - b. The Plaintiff shall complete his designation of Dr. Braswell by September 15, 2006, **with no further extensions of that date.**
 - c. To the extent that the Defendants need to supplement or change their expert designation in response to the Plaintiff's designation, they may do so by October 6, 2006.
 - d. The deadline for submitting motions, other than motions *in limine*, is October 27, 2006.
3. The Plaintiff's Motion for Disqualification is hereby **denied** at this time. However, on or before September 15, 2006, Attorney Roy K. Smith shall be required to show cause as to why he should not be removed as counsel of record for the Plaintiff. In his response to the court, Attorney Smith shall also identify any records related to this case that he has in his possession and state his plans for transferring those records to Sylvia Owen, who is acting as the Plaintiff's current counsel. Failure to respond to this Order will result in the removal of Roy Smith as counsel of record and could result in further sanctions.

IT IS SO ORDERED, this the 1st day of September, 2006.

S/James C. Sumner
UNITED STATES MAGISTRATE JUDGE